

Los Angeles Parkerizing Co., Inc. and Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC
Case 21-CA-28924

January 28, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon an amended charge filed by the Union on October 6, 1992, the General Counsel of the National Labor Relations Board issued a complaint on November 20, 1992, against Los Angeles Parkerizing Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 28, 1992, the General Counsel filed a Motion for Summary Judgment. On January 4, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 14, 1992, confirming a telephone conversation the same date, notified the Respondent that unless an answer was received by December 16, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Los Angeles, California, has been engaged in business as a specialist in the manufacture

of paints and coatings for metal and metallic surfaces. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of \$500,000, and annually sells and ships products, goods, and materials valued in excess of \$50,000 directly to customers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including shipping and receiving employees, truck drivers, and all lead persons employed by Los Angeles Parkerizing Co., Inc. at its facility located at 8205 South Alameda Street, Los Angeles, California; excluding office, clerical, supervisory, confidential employees, and guards as defined under the Act.

Since on or before June 16, 1986, and all material times, Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC (the Union) has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 16, 1991, to July 7, 1994.

At all times since on or before June 16, 1986, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent has failed to continue in effect all the terms and conditions of the agreement described above by engaging in the following conduct:

(a) Since on or about July 1, 1992, failing and refusing to implement the wage increases provided for in the aforesaid agreement.

(b) Since in or about August 1992, failing and refusing to deduct Union dues from employees' pay and to remit the dues to the Union as provided for in the aforesaid agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with Re-

spondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to implement contractual wage increases, we shall order the Respondent to implement such increases and to make the unit employees whole for any losses attributable to its failure to do so since July 1, 1992, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to deduct union dues from employees' pay and to remit the dues to the Union, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse the Union for its failure to do so since August 1992, with interest computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Los Angeles Parkerizing Co., Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1991-1994 agreement by failing and refusing to implement wage increases and to deduct union dues from employees' pay and to remit the dues to Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC as provided for in the agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Implement wage increases provided for in the agreement and make unit employees whole for its fail-

ure to do so since July 1, 1992, in the manner set forth in the remedy section of this decision.

(b) Deduct and remit union dues as provided for in the agreement and reimburse the Union for its failure to do so since August 1992, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of our collective-bargaining agreement with Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC by failing and refusing to implement wage increases, and failing and refusing to deduct and remit union dues as provided for in the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL implement wage increases as provided for in the agreement and make employees in the following unit whole for our failure to do so since July 1, 1992:

All production and maintenance employees, including shipping and receiving employees, truck

drivers, and all lead persons employed by us at our facility located at 8205 South Alameda Street, Los Angeles, California; excluding office, clerical, supervisory, confidential employees, and guards as defined under the Act.

WE WILL deduct and remit union dues as provided for in the agreement and reimburse the Union for our failure to do so since August 1992.

LOS ANGELES PARKERIZING CO., INC.